

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAHMIER A. EVERETT,

Plaintiff,

v.

3:20-CV-1260
(GTS/ML)

SHAWN DEAN, #3223, Investigator, N.Y.S. Police;
and RONALD LUSSI, #2982, Sr. Investigator/Supervisor,
N.Y.S. Police,

Defendants.

APPEARANCES:

JAHMIER A. EVERETT, No. 259063
Plaintiff, *Pro Se*
Broome County Correctional Facility
P.O. Box 2047
Binghamton, New York 13902-2047

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Jahmier A. Everett (“Plaintiff”) against two above-captioned individuals (“Defendants”), is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that certain claims in Plaintiff’s Amended Complaint be dismissed with prejudice (and without prior leave to amend), certain other claims be dismissed without prejudice (and with a limited leave to amend), and the remainder of the claims be permitted to proceed. (Dkt. No. 12.) Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including

Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.¹ Magistrate Judge Lovric employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Lovric's Report-Recommendation (Dkt. No.12) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that the following claims in Plaintiff's Amended Complaint (Dkt. No. 9) are **DISMISSED** with prejudice and without leave to amend: (1) Plaintiff's claim of respondent superior against Defendant Lussi in his individual capacity; (2) his claim of due process violations against Defendants; (3) his claim of fabrication of evidence against Defendant Lussi; (4) all claims against Defendants in their official capacities; and (5) his claim of harassment pursuant to New York state common law against Defendants; and it is further

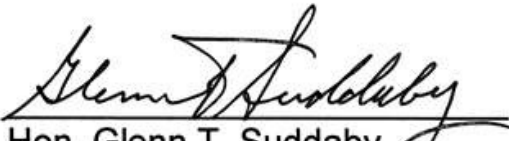
ORDERED that Plaintiff's claim of supervisory liability against Defendant Lussi in his individual capacity is **DISMISSED** without prejudice to repleading during the pendency of this action and with leave to amend within **THIRTY (30) DAYS** of the date of this Decision and Order; and it is further

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ORDERED that **SURVIVING** the Court's *sua sponte* review of his Amended Complaint the remaining claims in Plaintiff's Amended Complaint: (1) Plaintiff's claim of fabrication of evidence against Defendant Dean in his individual capacity; (2) his claim of defamation against Defendant Dean in his individual capacity; (3) his claim of false arrest in violation of the Fourth Amendment against Defendants; and (4) his claim of malicious prosecution against Defendants in their individual capacities; and it is further

ORDERED that the Clerk of Court is directed to issue Summonses and forward them, along with a copy of the Complaint, to the U.S. Marshal for service upon the remaining Defendants, who are directed to respond in accordance with the Federal Rules of Civil Procedure.

Dated: July 19, 2021
Syracuse, New York


Hon. Glenn T. Suddaby
Chief U.S. District Judge